



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MARCH 30, 2023

IN THE MATTER OF:

Appeal Board No. 627635

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board Nos. 627634 and 627635, the Appeal Board, on its own motion pursuant to Labor Law

§ 620 (3), has reopened and reconsidered the Administrative Law Judge's

combined decision filed November 16, 2022, which granted the claimant's application to reopen 022-20887 and ,
and sustained the initial determinations, holding the claimant ineligible to receive benefits, effective February 28, 2022, through March 6, 2022, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and holding the claimant ineligible to receive benefits, effective March 7, 2022, through March 20, 2022, on the basis that the claimant did not comply with registration requirements

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: On February 25, 2022, the Internal Revenue Service notified the claimant that someone had filed a federal tax return using his identity. The Internal Revenue Service directed the claimant to confirm his identity through a governmental identification program known as "Gov.Id." The claimant immediately began the process to do so by providing his Passport as well as

his social security card and awaiting a confirmatory interview.

In the interim, the claimant applied for unemployment insurance benefits on February 28, 2022, via the telephone, and his claim was made effective as of February 14, 2022. During that 37-minute conversation with the representative from the Department of Labor, the claimant mentioned that he was having identity issues because of the fraudulent tax return.

When the claimant attempted to certify for unemployment insurance benefits as of February 28, 2022, and thereafter, however, he was unable to complete the certification process. Every time that the claimant entered his social security number through the online process, the system would kick him off. If he tried to certify via the telephone, the system would hang up on him.

The claimant made multiple telephone calls to the Department of Labor, seeking assistance. He contacted the Department of Labor, attempting to speak with representatives, on March 6, March 13, March 22, and March 29. When he spoke with a representative on March 22, she indicated that the Department of Labor was working on the matter, that his problems with his certifications were related to his identity issues and "You cannot claim unless we are told you are verified." The claimant again spoke with a representative on March 29, who reiterated that his identity issues had precluded his successful certifications, that the identity issues were resolved at that time, and he should receive payment in two weeks. The claimant successfully certified for the week ending March 27, 2022, on March 30, 2022. Ultimately, the claimant applied for a backdating of his claim and benefits for the period from February 28, through March 20, 2022.

The claimant did not participate in the initial July hearing because he had moved and had not received the hearing packet. He was also suffering from COVID-19 at that time.

OPINION: The credible evidence establishes that the claimant did not proceed at the initial hearing, on July 20, 2022, because he did not have the paperwork necessary. The claimant was also ill with COVID-19 at the time. He sought reopening in a timely fashion. Hence, we find that the claimant has demonstrated good cause for his inability to participate in the original hearing. Accordingly, we conclude that the claimant is entitled to a decision on the merits.

The credible evidence further establishes that the claimant failed to certify and failed to register for unemployment insurance benefits for the period at issue due to technological issues related to his identity. Although the Commissioner of Labor contends that the claimant's inability to confirm his identity did not prevent him from successfully certifying, the Commissioner of Labor failed to produce first-hand evidence or testimony to substantiate the contention. Instead, the Commissioner of Labor's representative offered hearsay testimony that the claimant's problem with "Gov. Id" would not preclude his successful certifications.

We find it telling, however, that the Commissioner of Labor's witness bore no first-hand knowledge of "Gov.Id" and its relationship to the claimant's identity at the federal level, much less the interrelation between "Gov.Id" and the identity verification methods relied upon by the Department of Labor. Nor did this witness offer first-hand testimony as to identity issues and how it might affect the certification process. We find it significant, furthermore, that the witness did not dispute the claimant's consistent and credible testimony that he could not certify when he attempted to do so online and via the telephone. Nor did the witness dispute the claimant's conversations with representatives from the Department of Labor, on February 28, March 22, and March 29, and much less their assertions, on March 22 and March 29, as to his identity issues precluding him from successfully certifying for benefits.

We find it significant that the claimant demonstrated efforts to rectify his identity issues on multiple occasions after he opened his claim, by contacting the Department of Labor via telephone on February 28, March 6, March 13, March 22, March 28, and ultimately, March 29. We find it more significant that the claimant was able to certify, at the end of March, once his identity issue was resolved. Consequently, the claimant's first-hand consistent and credible testimony as to his inability to certify due to his identity issues, which prevented him from certifying and registering for the period from February 28, through March 20, 2022, is credited in lieu of the Commissioner of Labor's representative's hearsay testimony to the contrary.

Hence, we conclude that the claimant has demonstrated good cause for his failure to certify and register for benefits during the period in question and accordingly, we find that the claimant is entitled to a backdating of his claim.

DECISION: The combined decision of the Administrative Law Judge is modified as follows and, as so modified, is affirmed.

In Appeal Board Nos. 627634 and 627635, the claimant's application to reopen 022-20887 and , is granted.

In Appeal Board Nos. 627634 and 627635, the initial determinations, holding the claimant ineligible to receive benefits, effective February 28, 2022, through March 6, 2022, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and holding the claimant ineligible to receive benefits, effective March 7, 2022, through March 20, 2022, on the basis that the claimant did not comply with registration requirements, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER